Divorce Ordinance which provides that the Court shall give relief on the same principles as the Court in England gives relief in matrimonial proceedings, and it is well settled that in England the Divorce Court will not give any relief in respect of a polygamous marriage.

That, however, does not conclude the matter for the Petitioner still has to shew that the Straits Christian Marriage Ordinance of 1940 is a law "providing that or in contemplation of which marriage is monogamous."

As regards the question of whether the Ordinance provides that marriage under it is monogamous, I have nothing to say except that in my opinion it does not so provide.

As regards the question of whether it contemplates that marriage under it shall be monogamous, I have come though with some reluctance to the conclusion that it does. I find the expression "contemplate" predicated of a statute somewhat difficult to understand. It is not a common usage of the word and, indeed, I have been unable to find it in any other statute. If the marriage was to be monogamous in the contemplation of the parties to it the meaning would have been clear. It would have been safe to regard contemplation as being synonymous with intention. In all the circumstances of the case, however, I have come to the conclusion that I ought to take it that what is meant is a law enabling parties to enter into a marriage which they contemplate or intend shall be monogamous. I base this upon the conclusions at which I have already arrived that irrespective of any capacity which he may enjoy by reason of his personal law to enter into a polygamous marriage it is open to a man to enter into a monogamous one and that as the law stands in the Straits Settlements (or stood in 1941) it was possible for a party whose personal law permitted a polygamous marriage to enter into such a marriage lawfully and that therefore the only possible purpose of the Ordinance was to enable such persons if they chose to do so to contract a monogamous marriage according to Christian rites. I am, to some degree, fortified in this conclusion by the 1939 amendment to the Straits Settlements Divorce Ordinance which I have already discussed as I can discover no distinction in principle between the 1940 Christian Marriage Ordinance and the earlier one which it replaced. Prior to 1939 a Christian party to a marriage under that Ordinance was entitled to sue for divorce. And where there is doubt, as there is here, I think there is a case for invoking the principle that, if possible, legislation should be construed so as not to deprive persons of pre-existing rights. I am not, of course, applying that principle to the local Divorce Ordinance. I am, however, applying it to the Straits Ordinance because to my mind it is legitimate to look to that Ordinance for any light it may throw on the intentions of the Straits Settlements Legislature as to the interpretation it intended to be placed upon the Christian Marriage Ordinance.

I am also fortified in the view I have taken by the observations of Lord Merrivale P. in the case of *Peal v. Peal*[23] who described the Indian legislation as to Christian Marriage as providing for :—

". . . . the celebration of marriages not only for British Christians whose unions had been provided for by the older laws but for native Christians and for Christian subjects in India of foreign states — that is for various classes of persons governed by different systems or codes of personal law"

and by the following observation by Walsh J. relating to the same legislation in the case of *Emperor v. Maha Ram*[24] :—

"The legislation is not unlike the Foreign Marriages Act in England. The object of the Act is not to prevent people marrying as they wish, but to enable them to protect themselves and their posterity by a lawful and binding marriage if they wish to be married as Christians."

The Petitioner is accordingly granted *decree nisi* at three months and interim custody of the child of the marriage.

*Petition granted.*

## PUBLIC PROSECUTOR v. PENANG MUNICIPAL SERVICES UNION & ORS.

**[O. C. J. (Spenser Wilkinson J.) July 13, 1956]**
**[Penang — Originating Motion No. 25 of 1955]**

*Contempt of Court — Publication of comment upon pending proceedings — Whether it is necessary to constitute contempt that the comment must be on the actual issue before the Court — Discretion of Court to make order.*

This was an application by the Public Prosecutor against the four respondents in respect of the alleged contempt of Court. The matter arose out of a summons case in the 1st Magistrate's Court in Penang in which one W. A. J. Hodgetts was charged with using abusive words to one Shariff bin Ahmad, a Municipal bus driver and with voluntarily causing hurt to the said Shariff bin Ahmad. The accused in those proceedings was acquitted on the 1st charge and on the 2nd charge the offence was found proved and he was bound over under section 183(2)(b) of the Settlements Criminal Procedure Code. An appeal was lodged against the decision of the learned Magistrate on the 2nd charge. Whilst this was pending there was published in the Straits Times newspaper an extract from a statement issued by the first respondents for publication in the press referring to certain questions in cross-examination and submissions by counsel in the course of the trial in the Magistrate's Court. It was submitted that the publication was not a contempt (i) that the article really contained nothing beyond what had already been stated in Court; (ii) that the case of **Re Sin Poh Amalgamated Ltd. & Ors.**[1] had ruled that comment may be made on matters other than the actual issue which is before the Court.

**Held:** (1) the publication was not merely a report of what happened in Court but contained comment upon what was said and there is ample authority for the presumption that the comment upon pending proceedings ought not to be indulged in, still less when that comment

attributes improper motives to either the parties or counsel concerned in the case; (2) there may be contempt even where the comment is not on the actual issue before the Court and the case of **Re Sin Poh Amalgamated Ltd. & Ors.**[1] did not in fact decide that comments may be made on matters other than the actual issue before the Court; (3) the publication in this case constituted a contempt of Court as having a tendency to prejudice the fair disposal of the criminal proceedings referred to but in view of the circumstances, especially of the fact that the respondents might have been *bona fide* mistaken in their reading of the decision in **Re Sin Poh Amalgamated Ltd. & Ors.**[1], no order could be made against the respondents.

*Cases referred to:—*

(1) *Re Sin Poh Amalgamated Ltd. & Ors.* (1954) M.L.J. 152.

(2) *Hood v. Newby* 21 Ch. D. 605.

(3) *Public Prosecutor v. The Straits Times Press Ltd.* (1949) M.L.J. 81.

(4) *R. v. Davies* (1945) 1 K.B. 435.

ORIGINATING MOTION.

*D. C. Jackson* (Sr. Federal Counsel) for the applicant.

*Lim Kheng Kooi* for the 1st respondent.

*K. A. Seth* (*I. K. Meek* with him) for the 2nd, 3rd and 4th respondents.

**Spenser Wilkinson J.** : — These were proceedings by the Public Prosecutor against the four respondents in respect of an alleged contempt of Court. The matter arose out of a summons case in the 1st Magistrate's Court in Penang in which one W. A. J. Hodgetts was charged with using abusive words to one Shariff bin Ahmad, a Municipal bus driver and with voluntarily causing hurt to the said Shariff bin Ahmad. In those proceedings the accused was acquitted on the 1st charge and on the 2nd charge the offence was found proved and the accused bound over under section 183 (2) (b) of the Criminal Procedure Code. An appeal to the High Court against the Magistrate's decision on the 2nd charge was brought and while this appeal was still pending there was published in the "Straits Times" newspaper an extract from a statement issued by the 1st respondents for publication in the press referring to certain questions in cross-examination and submissions by Counsel in the course of the trial in the Magistrate's Court. It is this publication that constitutes the alleged contempt of Court.

At the conclusion of the hearing before me I reserved judgment and after considering the matters before me I came to the conclusion that it would be advisable for the appeal in the criminal proceedings in question to be heard by a different Judge; not so much because the article in question would have any influence on my mind but because in the proceedings before me there had necessarily been a good deal of discussion about those criminal proceedings and it appeared to me that my decision in regard to this alleged contempt of Court might be thought to some extent to prejudge some of the issues to be decided on the appeal. Having reached my decision, therefore, I announced the result and intimated that I would give my reasons in writing after the criminal proceedings had been disposed of, and this I now proceed to do.

The material parts of the statement as published in the "Straits Times" read as follows:—

> Union : We are not 'Anti'
> Racial harmony our aim.
>
> Penang Municipal Services Union, which has 1,300 members, today said that it had never been anti-European.
>
> * * * * *
>
> The Union said that if the allegations had been correctly reported, it would appear there had been an attempt by the defence to 'smear and vilify the name of the Union just because it had thought fit to provide legal assistance for one of its members.'
>
> According to the newspaper reports, the statement said, the defence had implied that the Union was against the European staff of the Municipality.
>
> The questions put by Defence Counsel to the complainant and his witnesses were 'an attempt to sow the seeds of racial discord between the Asian and European communities in Penang' it said.

Mr. Seth, who appeared for the 2nd, 3rd and 4th respondents, submitted, I think correctly, that there were two issues to be considered:—

(1) Did what had been published constitute contempt? and

(2) If so, should the Court exercise its discretion to make an order?

The respondents relied upon two main arguments to support their submission that the publication was not a contempt of Court at all. I will deal first with the second of these arguments, which is largely one of fact and is to the effect that the article really contains nothing beyond that which had already been stated in open Court. I was unable to accept this contention. The two passages in inverted commas quoted above are comment upon what was said in open Court and not a report of what happened. No one in the Magistrate's Court stated that the cross-examination of the complainant was an attempt to vilify the Union or to sow the seeds of racial discord. Counsel for the defence submitted that the case was backed by the Union and was a trial of strength between the Union and the European Staff. To describe this submission as an attempt to sow racial discord is clearly comment and comment which attributes improper motives to the defence. There is ample authority for the proposition that comment upon pending proceedings ought not to be indulged in, still less when that comment attributes improper motives to either the parties or Counsel concerned in the case.

The next argument which was put forward by the respondents raises a question of considerable public importance. The gist of this argument is that in his judgment in the case of *Re Sin Poh Amalgamated Ltd. & Ors.*[1] Murray-Aynsley C.J. ruled that comment

may be made on matters other than the actual issue which is before the Court; and that all the respondents in the present case were under the impression that in publishing the statement now in question they were doing something which had been expressly stated by a Court of law to be permissible. In my opinion if the judgment of the learned Chief Justice can be interpreted as laying down any such proposition (which in my opinion it cannot) then that proposition is not in accordance with the general line of authorities on the subject of contempt of Court and was not in harmony with the actual decision in that case.

There are two passages in that judgment which appear to have given rise to the views upon which the respondents acted in this case. The first of these is :—

"Any comment of a tendentious character, that is to say, comment which judges in advance the issues to be decided in such proceedings, may be contempt of Court."

This proposition with which, with all respect, I entirely agree is not in my opinion any authority for the converse proposition that comment which Judges in advance matters in criminal proceedings which are not the exact issues to be decided in such proceedings is not a contempt of Court. If the comment or pre-judgment is in respect of a matter which is completely immaterial to what has to be decided by the Court then no doubt it might not constitute a contempt of Court; but there is always the danger that the comment itself may have the effect of raising into a position of importance a point which until commented upon was of minor significance.

The other passage in the judgment of the learned Chief Justice upon which considerable reliance was placed is as follows :—

"Leaving these more general observations and coming to the present cases, it should be observed that the Court is only concerned with the publications in so far as they tend to prejudice the criminal proceedings against these 48 persons. Possibly some of these publications might have been the subject of proceedings for sedition. With that aspect we are not concerned. We are not concerned with the question of whether the Police should have dispersed this assembly or whether they used excessive force in doing so. This is a matter on which comment may be made, provided of course that care is taken to separate this question from that of the charge of obstructing the Police."

Before expressing my views upon this passage I would like to cite the remarks of Jessel M.R. and Cotton L.J. in *Hood v. Newby*[2]. Jessel M.R. said (at page 608) :—

"You must always look to what was being discussed by the Judges as well as to the words used."

and Cotton L.J. (at page 612) said :—

"Now Judges as well as other persons sometimes use short expressions which, if expanded, would be perfectly clear, but which applied to a different set of circumstances in their non-expanded form are ambiguous."

It appears to me perfectly plain from the actual decision in the *Re Sin Poh Amalgamated Ltd.*[1] case that the learned Chief Justice in the passage above quoted was dealing with an argument which had been put before him and was distinguishing between a discussion of the political or administrative question of whether or not in certain circumstances the Police should disperse an unlawful assembly and if so, with what force, from the question which had arisen in the criminal proceedings upon which comment had been made whether or not certain persons had obstructed the Police in the execution of their duties. Moreover, it is clear from the proviso at the conclusion of the paragraph quoted that comment even upon the administrative and political question of dispersing assemblies would not be permitted if it could not be separated from the question of the charge of obstructing the Police. One of the passages in respect of which a fine for contempt of Court was in fact imposed in that case is as follows :—

"When the students were about to give an explanation to the assembly, the anti-riot squad wielding their batons had already charged on them like thunder";

another passage in respect of which an even heavier fine was imposed is :—

"They (the students) battled only when they were attacked by the Police".

Both these passages were to some extent comment upon the question whether the Police had used excessive force, but they nevertheless constituted contempts of Court because they were not separated from the question of the Police.

Counsel's argument before me on this point appeared to be based upon the view that the only issue in the criminal proceedings before the Magistrate was whether or not the accused had caused hurt to the complainant. I am satisfied that when Murray-Aynsley C.J. used the expression "issues to be decided in such proceedings" in his judgment he did not intend to use the word "issues" in this narrow sense. In a criminal trial all sorts of questions collateral to the main issue are canvassed during the course of the trial and although the ultimate question to be decided may be whether or not the accused is guilty of the offence charged this does not alter the fact that the credibility of the witnesses is often the principal question upon which the decision of the ultimate issue will depend. If the learned Magistrate in the proceedings now in question had decided that the complainant's evidence was not to be believed or even that it was exaggerated to an extent sufficient to make it unreliable he would no doubt have acquitted the accused; and the defence was clearly entitled to take the point that the evidence was not reliable. This raised a collateral issue which the Magistrate had to and did decide. If Mr. Seth's

argument were to be accepted it would amount to this — that the character, reputation, conduct or other qualities of a vital witness in a criminal trial may be commented upon whilst the proceedings are still pending merely because that is not the central issue in the case. This contention appears to me to be both untenable and dangerous.

I do not find it necessary to consider again all the English authorities dealing with the subject of contempt of Court. These were dealt with fully in my judgment in the case of *Public Prosecutor v. The Straits Times Press Ltd.*[3] and I find no reason to modify anything which I then said. I would, however, reiterate that the question before me is not whether the publication does or will prejudice a fair disposal of the proceedings but whether it tends to do so. It is quite likely that the publication now in question would have had no effect whatever upon the mind of a Judge hearing the appeal; but I am inclined to think that it might cause some embarrassment to Counsel for the appellant, whether the same Counsel who appeared in the Court below or a different Counsel, in arguing that part of the appeal which might depend on a consideration of the credibility of the complainant and his witnesses. However this may be, it is quite clear to me that comment of this kind might well have an influence either conscious or unconscious upon any Magistrate who might have had to retry the original case. It must be borne in mind that the remarks made by the Court in the case of *R. v. Davies*[4] apply with much greater force to appeals to the High Court from the Magistrates' Courts in this country than to appeals to the Court of Criminal Appeal in England. As pointed out by Humphreys J. in that case the likelihood of prejudice in England is not great because cases of *venire de novo* do not happen every day, but in an appeal to the High Court here, not only in the appeal on questions of both law and fact but also a retrial is frequently ordered so that the possibility of prejudice is very considerably increased.

I had no doubt at all that the article in question constituted a contempt of Court as having a tendency to prejudice the fair disposal of the criminal proceedings referred to.

The learned Deputy Public Prosecutor submitted that the article was also a contempt in that it tended to bring into contempt the administration of justice by implying improper motives to Counsel for the accused, Counsel being an officer of the Court. Although it appeared to me that this element of contempt was not altogether lacking in this case I do not think that this aspect of the particular article complained of would by itself have constituted a contempt sufficient to justify interference by this Court.

The final question I had to decide, therefore, was whether this article, as one having a tendency to prejudice the fair disposal of the criminal proceedings, was of a sufficiently serious nature to justify the Court in exercising its special jurisdiction in regard to contempts. I came to the conclusion that the article was of such a nature. It was said that the only motive of the 1st respondents was to clear their name. There appeared to me to be two answers to this. In the first place the decision of the learned Magistrate sufficiently vindicated the Union in this respect; and secondly, the language used in the article appeared quite unnecessarily strong for the purpose alleged. In any event, it was clearly the Union's proper course to wait until the criminal proceedings had been finally disposed of before making any statement of this nature. In the absence of other circumstances, therefore, I should have been disposed to take a somewhat serious view of this matter, as far as the 1st respondents were concerned. I was satisfied, however, that their misreading of the decision of Murray-Aynsley C.J. was entirely *bona fide;* and in view of the unreserved apology which had been offered I came to the conclusion that the situation would be met by making no order against the 1st respondents except an order as to costs.

With regard to the other respondents I was satisfied that in their case also the misreading of the Singapore judgment was made in all good faith. I also accepted these respondents' statements that they were unaware that an appeal was pending; and in view of the fact that the statement was published at a time when the period for appeal had very nearly expired I think they had some grounds for assuming that the proceedings were in fact at an end. Had the proceedings in fact terminated when this article was published there would have been no question of a contempt of Court. For these reasons I made no order in respect of the 2nd, 3rd and 4th respondents.

*Order accordingly.*

Solicitors: *Lim Kheng Kooi; Presgrave & Matthews.*